Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

NO. 76-421

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

OTHA LEE MOBBS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, OF THE STATE OF CALIFORNIA

MEMORANDUM FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Respondent, with two others, was charged with the commission of the offense of murder, including a use allegation. In Count I and in Count II, the respondent and two others were accused of attempted robbery, again with a use allegation.

The incident out of which the charges arose, occurred on June 8, 1974, and the respondent was arrested on June 22,

1974, by officers of the Los Angeles County Sheriff's Department. While enroute to the Hall of Justice, the respondent was advised of his Miranda rights and respondent gave detailed answers to the deputies questions regarding the incident.

On arrival at the Hall of Justice, the respondent was again advised of his Miranda rights and indicated that he did not wish to discuss the case. In response to a question by the deputies stating, "Do you want to talk about this case, or not?" The respondent replied, "Not right now." Respondent further stated that he changed his mind and that he wished to talk to two people. The respondent then identified the two people as his mother and a Pam Williams. The respondent then telephoned his home and spoke with his younger brother. The telephone conversation was monitored by one of the interrogating deputies and the respondent was not aware that the deputy was listening to the telephone conversation until the telephone conversation concluded. Following the telephone call, the deputy resumed the interrogation and obtained appellant's confession.

The California Court of Appeal held that under Miranda vs. Arizona, 384 U.S. 436, 86 S.Ct.1602 (1966), and People vs. Fioritto, 68 C.2d 714, the admission into evidence of

the second recorded conversation was erroneous. While the court held that there was substantial evidence to support the trial court's conclusion as to the legality of the patrol car confession, they were clearly of the opinion that the interrogating deputies clearly were told by the appellant that he had changed his mind and had reached a decision to remain silent. The court held that the fact that shortly before the telephone call, the respondent may have been willing to talk is irrelevant. It held that the mandate of Miranda regarding the invocation of Constitutional rights is "broad" and may be indicated by a suspect "in any manner and at any state of the process."

The decision need not be made with "unmistakeable clarity." Accordingly, the court ruled because the taped confession followed the colloquy wherein the respondent indicated that he desired to remain silent, error was committed in the admission of that confession into evidence through a recording.

We submit that the California Court of Appeal, Second Appellate District, was correct.

> "Once warning had been given, the subsequent procedure is clear. If the individual indicates in any manner at any time prior to the questioning, that he wishes to remain silent, the interrogation must

cease. At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing the statement after the privilege has once been invoked."

384 U.S. at 473 - 474.

It is submitted that the case at bar does not fall within the exception to the Miranda rule stated in the case of Michigan v. Mosley, 423 U.S. 96, (1975) as in the case at the bar the interrogation dealt with the crime in issue, the time span was practically continuous and there was a clear request to discontinue interrogation. This is a case where the police failed to honor a decision of a person in custody to cut off questioning either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind.

It is submitted that the interrogation environment carries its own badge of intimidation. While perhaps not a physical intimidation, nontheless there is a prohibitive destruction of human dignity. "This destruction is at odds with one of the most cherished principles namely that the individual may not be compelled to incriminate himself." Miranda v. Arizona, 384 U.S. 436, 457, 458, 86 S.Ct. 1602, 1619.

In the Opinion on the denial of rehearing, the California Court of Appeal reaffirmed that further inquiry by the interrogating officers should have ceased after the respondent had twice informed his interrogators that he had changed his mind. People v. Fioritto, 68 C2d 714. While the California courts are not at liberty to establish lower standards than those established by this court in a certain area of law, they are at liberty to establish higher standards. Ker v. California, 374 U.S. 23, 83 Supreme Court 1620 (1963).

Wherefore, it is respectfully submitted the petition for a writ of certiorari should be denied.

October 18, 1976.

Respectfully submitted,

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